

**Letter of Findings Number: 03-20140146  
Withholding Tax  
For Tax Year 2011**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

**ISSUE**

**I. Withholding Tax—Imposition.**

**Authority:** IC § 6-8.1-5-1; [45 IAC 3.1-1-97](#).

Taxpayer protests the imposition of withholding tax.

**STATEMENT OF FACTS**

Taxpayer is an Indiana business. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had not remitted withholding tax for three employees during the tax year 2011. The Department therefore issued proposed assessments for withholding tax and interest for that year. Taxpayer protests that it did withhold for those three employees and that no withholding tax or interest is due. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

**I. Withholding Tax—Imposition.**

**DISCUSSION**

Taxpayer protests that it does not owe additional withholding tax for the tax year 2011. Taxpayer states that it used a payroll service to perform its withholding duties and that the W-2s for the employees in question show that income tax was withheld as required. Taxpayer notes that two of the three employees worked for Taxpayer approximately one day and that the amount of wages and related tax was therefore minimal. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The relevant regulation is [45 IAC 3.1-1-97](#), which states in relevant part:

Employers who make payments of wages subject to the Adjusted Gross Income Tax Act, and who are required to withhold Federal taxes pursuant to the Internal Revenue Code (USC Title 26), are required to withhold from employees' wages Adjusted Gross and County Adjusted Gross Income Tax.

Therefore, employers such as Taxpayer are required to withhold adjusted gross and county adjusted gross income tax from payments of wages made to its employees.

In support of its protest, Taxpayer provided copies of the W-2 forms for the three employees. Those forms show that Indiana tax was withheld for one employee. Also, Taxpayer provided printouts showing that the payroll company which Taxpayer employed did make payments to the Department. Taxpayer's position is that the W-2 forms establish that tax was withheld and that the payroll company printouts show that the tax was then remitted to the Department.

The Department notes that the payroll company printouts contain general deposit information and do not establish that what was remitted by the payroll company was the withholding tax for the three employees at issue. As previously mentioned, IC § 6-8.1-5-1(c) provides that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made. The documentation submitted in the course of the protest process does not establish that the tax was withheld and remitted for these three employees. Taxpayer has not met the burden imposed by IC § 6-8.1-5-1(c).

**FINDING**

Taxpayer's protest is denied.

*Posted: 06/25/2014 by Legislative Services Agency*  
An [html](#) version of this document.